

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

DAVID TROUPE,

Plaintiff,

V.

SMITH, et al.,

## Defendants.

CASE NO. C15-5671 RBL-KLS

ORDER GRANTING STAY OF  
DISCOVERY AND RE-NOTING  
MOTION FOR SUMMARY  
JUDGMENT

Before the Court is Defendants' Motion for Protective Order. Dkt. 30. Defendants move to stay discovery pending adjudication of their motion for summary judgment, which is currently noted for December 11, 2015. Dkt. 28.

## BACKGROUND

Plaintiff filed this lawsuit on September 18, 2014. Dkt. 1. He alleges that Defendants violated his Eighth Amendment rights. On November 16, 2015, Defendants filed a motion for summary judgment arguing, among other things, that they did not violate his constitutional rights and they are entitled to qualified immunity. Dkt. 28.

Prior to entering a notice of appearance in this case, Plaintiff served Defendants with discovery. These requests included two sets of interrogatories to former Superintendent Scott Russell and Patricia Paterson. Dkt. 30, Exhibit 1, at ¶ 2. Defendants ask the Court to issue a

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1 protective order staying all discovery until the resolution of their motion for summary judgment.  
2 Defendants' counsel has conferred with Plaintiff regarding this issue, and they were unable to  
3 reach an agreement. *Id.*, Exhibit 1, at ¶ 4.

4 **DISCUSSION**

5 The court has broad discretionary powers to control discovery. *Little v. City of Seattle*,  
6 863 F.2d 681, 685 (9th Cir. 1988). Upon showing of good cause, the court may deny or limit  
7 discovery. Fed. R. Civ. P. 26(c). A court may relieve a party of the burdens of discovery while a  
8 dispositive motion is pending. *DiMartini v. Ferrin*, 889 F.2d 922, 926 (9th Cir. 1989), *amended*  
9 by 906 F.2d 465 (9th Cir. 1990); *Rae v. Union Bank*, 725 F.2d 478 (9th Cir. 1984). Federal  
10 courts have applied a two-step test to determine whether a stay of discovery is appropriate until a  
11 dispositive motion has been decided. *Ministerio Roca Solida v. U.S. Dep't of Fish and Wildlife*,  
12 288 F.R.D. 500, 503 (D. Nev. 2013). First, the pending motion must be dispositive of the entire  
13 case. *Id.* Second, the court must determine whether the pending motion can be decided without  
14 additional discovery. *Id.* In applying this test, courts take a preliminary peek at the merits of the  
15 dispositive motion to assess whether a stay is warranted. *Id.* When government officials raise  
16 the issue of qualified immunity, the Supreme Court has held that discovery should not proceed  
17 until the threshold issue of immunity has been resolved. *Harlow v. Fitzgerald*, 457 U.S. 800,  
18 818 (1982); *Anderson v. Creighton*, 483 U.S. 635, 646 n.6 (1987); *DiMartini*, 889 F.2d at 926.

19 There is a serious question as to the merits of Plaintiff's complaint and the motion for  
20 summary judgment would be dispositive of the entire case. Defendants also assert that they are  
21 entitled to qualified immunity and therefore, it is appropriate that discovery be stayed until the  
22 summary judgment motion has been decided by the Court.

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1 As noted above, Defendants' motion for summary judgment was noted on the Court's  
2 calendar for consideration on December 11, 2015. Dkt. 28. Therefore, Plaintiff's response to the  
3 motion should have been filed with the Court by December 7, 2015. Plaintiff's response was not  
4 filed with the Court until December 14, 2015. Dkt. 34. However, the Court will consider the  
5 response as timely filed and re-note Defendants' motion to allow Defendants time to file a reply  
6 if they wish to do so.

7 || Accordingly, it is **ORDERED**:

8 (1) Defendants' Motion for Protective Order (Dkt. 30) is **GRANTED**; all discovery  
9 shall be **STAYED** pending further order of this Court.

10 (2) Defendants' Motion for Summary Judgment (Dkt. 28) is **renoted for January 15,**  
11 **2016.** Defendants may file a reply to Plaintiff's response (Dkt. 34) by **January 15, 2016.**

12 (3) The Clerk shall send a copy of this Order to Plaintiff and to counsel for  
13 Defendants.

14 || **DATED** this 29<sup>th</sup> day of December, 2015.

Keen L. Stromberg

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**Karen L. Strombom**  
**United States Magistrate Judge**